



State of Idaho

**DEPARTMENT OF WATER RESOURCES**

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

**DIRK KEMPTHORNE**  
GOVERNOR

**KARL J. DREHER**  
DIRECTOR

May 13, 2004

**Re: Mitigation for ground water use pursuant to IDAPA 37.03.12.050**

Dear Ground Water User:

You have received this notice because our records show that you are the owner of a ground water right diverted within Water District 34, or because Water District 34 records show you are an operator assessed by the water district for ground water use. If you are no longer the owner or operator of a ground water right diverted within Water District 34, please disregard this notice.

The purpose of this letter is to inform you that water users with senior surface water rights diverted from the Big Lost River have filed requests for mitigation with Water District 34, pursuant to the "Water Distribution Rules – Water District 34" IDAPA 37.03.12.050 (Rule 50). The Idaho Department of Water Resources (IDWR) received a copy of these mitigation requests on April 29, 2004 and May 13, 2004 and has determined that these water rights are eligible to receive mitigation from junior ground water users pursuant to this rule. The surface water rights for which mitigation has been requested are water rights 34-00372A, 34-00372B, 34-00690B, 34-00666, 34-00621B, and 34-10872. Water rights 34-00372A, 34-00372B, and 34-00690B have a total maximum diversion rate of 6.53 cfs and have priority dates of June 1, 1883 and June 30, 1883. The point of diversion for these water rights is the Moore diversion. Water rights 34-00666, 34-00621B, and 34-10872 have a total maximum diversion rate of 6.4 cfs and have priority dates of June 1, 1887, January 1, 1892, and June 1, 1896. The point of diversion for these water rights is the Eastside diversion.

As a ground water user, you are subject to conjunctive administration and are obligated to provide mitigation to the above-mentioned surface water rights unless all of your ground water rights meet one of the following exceptions.

1. Your ground water rights contain a remark specifically stating that the right will be administered as separate from the Big Lost River and its tributaries.
2. Your ground water rights are small domestic and stock water rights.

Based on Rule 50, there are three options for fulfilling these requests for mitigation. The required mitigation may be fulfilled by the water district, individual ground water users, an organization of ground water users, or a combination thereof. These options are:

1. Provide water to the water users who have called for mitigation by augmenting natural flow in the Big Lost River at the point of diversion for the Moore and Eastside Canals or by adding water to canals or laterals that can be used to deliver water to the applicable places of use (Rule 50.04.c.ii and iii). Flow will need to be augmented by 6.53 cfs at the Moore diversion on each day during the 2004 irrigation season that water delivery is called for and the natural flow is not otherwise available to fulfill these water rights. Flow will need to be augmented by up to 6.4 cfs at the Eastside diversion on each day during the 2004 irrigation season that water delivery is called for, the natural flow is not otherwise available to fill these rights, and the water rights would have been in priority absent diversion of ground water.
2. Provide 6,110 AF of water to augment natural flow in the Big Lost River system (Rule 50.04.c and 50.04.c.i). This water may be added to the Big Lost River at any point(s) between Mackay Dam and the Moore diversion. The schedule for delivery of the 6,110 AF for flow augmentation is outlined in Rule 50.04.c.i.
3. Submit an alternative mitigation plan(s) (Rule 50.04.e), which identifies actions and measures to prevent or compensate for impacts to diversions by junior ground water users, to the director for consideration pursuant to IDAPA 37.03.11.043 (Idaho Rules for Conjunctive Management of Surface and Ground Water Sources). Alternative mitigation plans could include monetary compensation, partial fulfillment of the flow augmentation requirements combined with a partial reduction in ground water use, non-use of wells, or other combinations of actions that prevent or compensate for the impacts.

Per Rule 50.04.d, Water District 34 is authorized to acquire water supplies, on behalf of the ground water users, to augment natural flow for mitigation purposes. The water district is authorized to add the cost of acquiring mitigation water to the annual assessment of ground water users who do not provide separate augmentation or a separate mitigation plan. Junior ground water right holders who propose to provide alternative mitigation plans must file a written mitigation plan with Water District 34 and IDWR by June 4, 2004. If Water District 34 does not acquire water for mitigation or file an alternative mitigation plan on behalf of the ground water users, ground water users must submit mitigation plan(s) to IDWR either individually or through another organization by June 4, 2004. Mitigation plans submitted to IDWR should be addressed to IDWR at the address shown on this letterhead. Holders of junior ground water rights who do not divert or use ground water in 2004 will not be subject to mitigation costs.

The Director of IDWR may order curtailment of ground water use pursuant to Rule 40 of the "Rules for Conjunctive Management of Surface and Ground Water Resources," IDAPA 37.03.11 if both of the following occur.

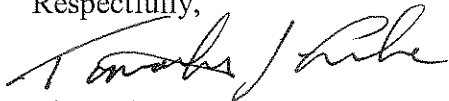
1. The water users who have requested mitigation also file a petition with the director of IDWR requesting curtailment of junior ground water users pursuant to IDAPA 37.03.11.040.
2. The mitigation requirements under IDAPA 37.03.12.050 are not fulfilled by the junior ground water users.

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If you have any questions regarding this letter please contact Jennifer Berkey or Tim Luke at 208-327-7900 or Water District 34 at 208-588-3137.

Respectfully,

A handwritten signature in black ink, appearing to read "Tim Luke", written in a cursive style.

Tim Luke

Water Distribution Section

cc: Bob Duke, Watermaster, Water District 34  
IDWR Eastern Region

Enclosure: Rule 50, Water Distribution Rules – Water District 34

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